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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

CHASOM BROWN, WILLIAM BYATT,  
JEREMY DAVIS, CHRISTOPHER  
CASTILLO, and MONIQUE TRUJILLO,  
individually and on behalf of all similarly  
situated,

Plaintiffs,

v.

GOOGLE LLC,  
Defendant.

Case No. 4:20-cv-03664-YGR-SVK

**GOOGLE LLC'S ADMINISTRATIVE  
MOTION TO SEAL PORTIONS OF  
JOINT LETTER BRIEF IN RESPONSE  
TO ORDER RE PRIVILEGE DISPUTE  
(DKT. 487-1, DISPUTE P25)**

Referral: Hon. Susan van Keulen, USMJ

## I. INTRODUCTION

Pursuant to Civil Local Rules 7-11 and 79-5, Defendant Google LLC (“Google”) respectfully seeks to seal certain portions of the Parties’ Joint Letter Brief in Response to Order re Privilege Dispute, Dkt. 487-1, Dispute P25 (“Joint Letter Brief”) because it contains non-public, highly sensitive and confidential business information that could affect Google’s competitive standing and may expose Google to increased security risks if publicly disclosed. This information is highly confidential and should be protected.

This Administrative Motion pertains for the following information contained in the Joint Letter Brief:

Document	Portions to be Filed Under Seal	Party Claiming Confidentiality
Joint Letter Brief	Portions Highlighted in Yellow at: Pages 1, 2, 3	Google

## II. LEGAL STANDARD

A party seeking to seal material must “establish[] that the document, or portions thereof, are privileged, protectable as a trade secret or otherwise entitled to protection under the law” (*i.e.*, is “sealable”). Civ. L.R. 79-5(b). The sealing request must also “be narrowly tailored to seek sealing only of sealable material.” *Id.*

In the context of dispositive motions, materials may be sealed in the Ninth Circuit upon a showing that there are “compelling reasons” to seal the information. *See Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1179-80 (9th Cir. 2006). However, a party seeking to seal information in a non-dispositive motion must show only “good cause.” *Id.* at 1179-80. The rationale for the lower standard with respect to non-dispositive motions is that “the public has less of a need for access to court records attached only to non-dispositive motions because these documents are often unrelated, or only tangentially related, to the underlying cause of action” and that as a result “[t]he public policies that support the right of access to dispositive motions, and related materials, do not apply with equal force to non-dispositive materials.” *Kamakana*, 447 F.3d at 1179; *see also TVIIM, LLC v. McAfee, Inc.*, 2015 WL 5116721, at \*1 (N.D. Cal. Aug. 28, 2015) (“Records attached to non-

dispositive motions are not subject to the strong presumption of access.”) (citation omitted). Under the “good cause” standard, courts will seal statements reporting on a company’s users, sales, investments, or other information that is ordinarily kept secret for competitive purposes. *See Hanginout, Inc. v. Google, Inc.*, 2014 WL 1234499, at \*1 (S.D. Cal. Mar. 24, 2014); *Nitride Semiconductors Co. v. RayVio Corp.*, 2018 WL 10701873, at \*1 (N.D. Cal. Aug. 1, 2018) (granting motion to seal “[c]onfidential and proprietary information regarding [Defendant]’s products” under “good cause” standard) (van Keulen, J.). Although the materials that Google seeks to seal here easily meet the higher “compelling reasons” standard, the Court need only consider whether these materials meet the lower “good cause” standard.

### III. THE ABOVE IDENTIFIED MATERIALS SHOULD ALL BE SEALED

Courts have repeatedly found it appropriate to seal documents that contain “business information that might harm a litigant’s competitive standing.” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 589-99 (1978). Good cause to seal is shown when a party seeks to seal materials that “contain[] confidential information about the operation of [the party’s] products and that public disclosure could harm [the party] by disclosing confidential technical information.” *Digital Reg of Texas, LLC v. Adobe Sys., Inc.*, 2014 WL 6986068, at \*1 (N.D. Cal. Dec. 10, 2014). Materials that could harm a litigant’s competitive standing may be sealed even under the “compelling reasons” standard. *See e.g., Icon-IP Pty Ltd. v. Specialized Bicycle Components, Inc.*, 2015 WL 984121, at \*2 (N.D. Cal. Mar. 4, 2015) (information “is appropriately sealable under the ‘compelling reasons’ standard where that information could be used to the company’s competitive disadvantage”) (citation omitted). Courts in this district have also determined that motions to seal may be granted as to potential trade secrets. *See, e.g. United Tactical Sys., LLC v. Real Action Paintball, Inc.*, 2015 WL 295584, at \*3 (N.D. Cal. Jan. 21, 2015) (rejecting argument against sealing “that [the party] ha[s] not shown that the substance of the information . . . amounts to a trade secret”).

Here, the Joint Letter Brief comprises confidential and proprietary information regarding highly sensitive features of Google’s internal systems and operations that Google does not share publicly. Specifically, this information provides details related to internal projects, strategies, and analyses. Such information reveals Google’s internal strategies, system designs, and business

1 practices for operating and maintaining many of its important services while complying with its  
2 legal and privacy obligations.

3       Public disclosure of the above-listed information would harm Google’s competitive standing  
4 it has earned through years of innovation and careful deliberation, by revealing sensitive aspects of  
5 Google’s proprietary systems, strategies, and designs to Google’s competitors. That alone is a proper  
6 basis to seal such information. *See, e.g., Free Range Content, Inc. v. Google Inc.*, No. 14-cv-02329-  
7 BLF, Dkt. No. 192, at 3-9 (N.D. Cal. May 3, 2017) (granting Google’s motion to seal certain  
8 sensitive business information related to Google’s processes and policies to ensure the integrity and  
9 security of a different advertising system); *Huawei Techs., Co. v. Samsung Elecs. Co.*, No. 3:16-cv-  
10 02787-WHO, Dkt. No. 446, at 19 (N.D. Cal. Jan. 30, 2019) (sealing confidential sales data because  
11 “disclosure would harm their competitive standing by giving competitors insight they do not have”);  
12 *Trotsky v. Travelers Indem. Co.*, 2013 WL 12116153, at \*8 (W.D. Wash. May 8, 2013) (granting  
13 motion to seal as to “internal research results that disclose statistical coding that is not publically  
14 available”).

15       Moreover, if publicly disclosed, malicious actors may use such information to seek to  
16 compromise Google’s data sources, including details related to project names, internal identifiers,  
17 Google’s internal practices with regard to Incognito and its proprietary functions, as well as internal  
18 metrics and investigation into financial impact of certain features, that Google maintains as  
19 confidential in the ordinary course of its business and is not generally known to the public or  
20 Google’s competitors. Google would be placed at an increased risk of cyber security threats. *See,*  
21 *e.g., In re Google Inc. Gmail Litig.*, 2013 WL 5366963, at \*3 (N.D. Cal. Sept. 25, 2013) (sealing  
22 “material concern[ing] how users’ interactions with the Gmail system affects how messages are  
23 transmitted” because if made public, it “could lead to a breach in the security of the Gmail system”).  
24 The security threat is an additional reason for this Court to seal the identified information.

25       The information Google seeks to redact is the minimal amount of information needed to  
26 protect its internal systems and operations from being exposed to not only its competitors but also  
27 to nefarious actors who may improperly seek access to and disrupt these systems and operations.

28

1 The “good cause” rather than the “compelling reasons” standard should apply but under either  
2 standard, Google’s sealing request is warranted.

3 **IV. CONCLUSION**

4 For the foregoing reasons, the Court should seal the identified portions of the Joint Letter  
5 Brief.

6  
7 DATED: March 25, 2022

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